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**WSPA Formal Testimony - For The Record  
2005 IEPR – Petroleum Infrastructure Environmental Performance Report  
Docket No. 04-IEP-01A**

**Committee Workshop  
Sacramento, CA  
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Good Morning, Commissioners, aides, staff, and members of the public. My name is Michael Barr and I'm a Partner with Pillsbury Winthrop, Special Counsel to the Western States Petroleum Association (WSPA).

My own experience with petroleum infrastructure includes advising refineries, pipelines and marine terminals regarding permits of all kinds in California. I have also helped many other kinds of energy facilities obtain permits in California, including closely related cogeneration and chemical projects plus electric power plants, gas compressor stations, solar, wind, biomass and even a few, rare nuclear projects. Each kind of energy project faces its own challenges but all can be sited and operated successfully in California.

WSPA and its members participated with great interest in the 2003 IEPR process and 2004 update. Joe Sporano, the President of WSPA, addressed your full Commission at the final adoption hearing on November 12, 2003. WSPA is looking forward to contributing to the 2005 update. We appreciate the Commission's view that the IEPR is an evolving document and is open to revisiting issues that impact the state's energy needs.

My remarks today represent a shorter version of WSPA's full written comments that will be submitted to the Commission regarding the current topic – the Petroleum Infrastructure Environmental Performance Report (PIEPR). We will submit our written comments by December 30, 2004.

As in 2003, WSPA remains committed to continued dialogue on the energy challenges facing California. And, we still agree with the Commission's statement that "California must strike a balance between delivering increasing levels of energy and its commitment to environmental quality."



WSPA believes in promoting a reliable, cost effective, balanced and environmentally responsible future energy base. The policies developed at the state, local and federal levels will shape the investments necessary to assure that California's future energy needs are reliable and cost effectively met, while providing for economic growth in California, preserving the public health and safety, and improving environmental quality in California.

#### Need for Petroleum Infrastructure

In 2003, WSPA agreed with the IEPR's statement that "above all, California must actively promote infrastructure enhancements such as additional pipeline capacity, incentives for increased operation and use of in-state storage, in-state productive capacity, and nontraditional supply sources such as liquefied natural gas." The CEC went on to state that "It is essential that additional marine and storage facilities are constructed and operating as the demand for transportation fuel increases."

Current petroleum infrastructure in CA is operating at or near capacity in terms of production, refining, storage, importation and transport via pipeline. CA refineries must run at full capacity to meet growing demand, which exacerbates price spikes throughout the distribution system should there be mishaps and unplanned shutdowns. The State must act to not only expand its petroleum infrastructure facilities but also act to maintain its existing petroleum infrastructure capacity.

#### Need to understand California's Petroleum Infrastructure

In 2003, WSPA strongly supported the Commission report's recommendation for a more comprehensive evaluation of the state's petroleum infrastructure, including refineries, pipelines, ports, and storage facilities, to identify product flows and bottlenecks in the system, and to recommend solutions. Our members are working cooperatively with you and your staff during 2004 to expand and improve the process by which they report to the Energy Commission sensitive information regarding petroleum products volumes and pricing.

#### Need to understand potential impacts of unbalanced environmental policies/regulations on Petroleum Infrastructure

Environmental policies/regulations have had a significant impact on petroleum facilities. Regulatory agencies have regulated and re-regulated petroleum infrastructure facilities. The available and cost-effective options -- the low hanging fruit -- is gone.

Unbalanced and excessive environmental policies/regulations have reduced existing petroleum capacity unnecessarily. WSPA and its members are concerned that further regulations and permitting requirements will significantly reduce capacity further in California.

We feel that your Commission should champion the need for energy and provide balance as more waves of environmental policies/regulations are being developed. Introducing a balanced approach is the only way to ensure that a reliable supply of energy is provided consistent with protection of environment and public health and safety.



### Need for Permit Streamlining

In 2003, the Commission report identified the difficulty in acquiring construction permits from multiple local, state and federal authorities as a major barrier to expanding petroleum infrastructure. These existing layers of permitting bureaucracy are inefficient and overlapping, and contribute to the continuing shortage of storage capacity.

In the short-term, the state must remove the barriers for industry to obtain needed permits to expand petroleum infrastructure facilities in a timely manner, without jeopardizing environmental quality. This is a key component of California's future energy reliability.

### Need for complete analysis for all energy sources

As Gina Grey of WSPA testified during your 2005 IEPR scoping Workshop on August 18, 2004, WSPA will be happy to assist you in defining plans that will ensure the state is successful in achieving improved energy efficiency and continued economic growth. She noted then your staff's proposed recommendation for a Petroleum Infrastructure Environmental Performance Report - or what appears to be an "environmental report card" - for our industry. We understand that a similar report is proposed for the electric generation industry.

While our industry will certainly cooperate with the PIEPR, we continue to recommend that the Commission ask a comparable list of key questions about non-petroleum fuels and other portions of the state's energy sector and prepare similar "report cards" for all energy sources at the same time. The Commission has determined that the state's energy supply policies must be economic, reliable, and environmentally sensitive. We support these criteria for all energy supplies. We do not agree that non-petroleum fuels and technologies should automatically be deemed to comply with those policies. They should not be promoted without taking comparable tests. Their environmental attributes should not be ignored because their performance is "incomplete." They should be graded fully and fairly on comparable "report cards" during the 2005 IEPR planning cycle.

Now, to comment on the six questions in Attachment A to the PIEPR Scoping draft:

1. What do you believe is the most important issue staff should address in the PIEPR?

In our view, the most critical issue is for the staff to develop a methodology for evaluating the environmental performance of all energy sources. That would include petroleum infrastructure. It would also include the infrastructure required for other fossil fuels such as CNG and LNG, the infrastructure required for hydrogen, the infrastructure required for solid fuels including biomass, the infrastructure required for land intensive energy sources such as wind and solar, the infrastructure required for hydroelectric power, and the infrastructure required for every other reasonably contending energy source in California.

We understand and support a fairly high level environmental performance review by the Commission staff. It is conceivable that the staff's attempt to develop an environmental



“report card” might cover all the appropriate subjects for all technologies and apply a reasonable grading system.

However, we see considerable challenges and the continuing need for dialogue with all affected stakeholders. For example, has the staff identified all of the appropriate environmental attributes? Should they be given the same weight or different weight? If they should be given different weight, how should they be weighted? Should they be graded “pass/fail”, by letter grades, by numbers or some other way? The staff has begun to answer questions like this in the Attachment B “Scoping Document.” It is clear to us from the inconsistencies and gaps in Attachment B, though, that this is only the first step of many required to develop any approach that will benefit the environment and the economy of California.

2. What additional areas do you believe the staff should address in its petroleum infrastructure environmental trends analysis?

We believe that another significant areas that should be addressed is an evaluation of petroleum capacity reduction trends resulting from past, overlapping environmental policies/regulations.

We understand that the staff will be looking at areas that are not strictly environmental but involve economic, cultural and/or social considerations as well. We will certainly be interested in reviewing and commenting on those areas.

3. What data do you have that could assist staff in conducting its analyses?

a. CEC staff should rely on prior environmental studies of petroleum infrastructure facilities. We suggest the following steps:

- (1) There is no need for the staff to re-study or re-do studies that cost millions and took years to perform, such as the 40+ EIRs on petroleum infrastructure projects throughout California during the last 10 years.
- (2) Find representative prior studies, starting with the state CEQA database for EIRs for petroleum infrastructure projects
- (3) Review prior studies, including reviewing their scope and quality
- (4) Incorporate prior studies that meet CEC quality standards (and explain the basis for CEC rejection of any prior studies)
- (5) Identify data gaps and your proposed means of filling them for public review



b. CEC staff should rely on prior environmental requirements applicable to petroleum infrastructure facilities. We suggest the following steps:

- (1) Identity and rely on the relevant work of the many specialized air, biological, safety, hazardous materials, toxics, waste management and water agencies in California
- (2) Provide examples of specific requirements that apply to petroleum infrastructure facilities (federal, state, regional and local)
- (3) Identify regulatory gaps and your proposed ways to fill them for public review

4. What analyses can you provide that would supplement or improve staff's proposed scope of work?

If the CEC staff has difficulty locating or obtaining the truly voluminous and numerous prior environmental studies, environmental agency administrative records and similar records, we would be happy to determine whether our members have more reasonably available copies in their files.

Until WSPA and its members see the staff's direction more clearly, we do not see that additional WSPA analysis would be cost effective at the current time.

5. What information do local, regional or state agencies need from the Energy Commission to help plan for continued or expanded operation of petroleum infrastructure facilities?

WSPA and its members are familiar with the energy data gathering and forecasting work of the Commission. We believe that the Commission consistently produces very high quality analyses and forecasts which can provide very valuable input to cities and counties where energy facilities are located or might be located. Energy Commission information can be very valuable when cities and counties revise their general plans and zoning to account for the future growth of California. We support the Commission sharing such data with cities and counties with appropriate confidentiality safeguards.

We also understand that the Energy Commission and its staff routinely provide data, analysis and updates on a confidential basis to all or most of the state and regional environmental and resources agencies in California. Again, we believe this information is of very high quality and provides useful input to the plans and regulatory programs of environmental resources agencies.

By the same token, we think that cities, counties, environmental agencies and resources agencies can and should provide high quality information to the Energy Commission regarding their plans and programs that might affect the entire energy infrastructure of California.

We know that we should not assume that this information flow occurs easily or without cost. WSPA and its members are committed to helping the Energy Commission and all



interested agencies in obtaining and using the most current, highest quality, reasonably available data analysis for energy planning and regulation in California.

6. Other comments or suggestions?

a. Exclude areas that are based on opinion rather than scientific methods

- (1) Information about “environmental concerns” within “populations” have no place in an environmental analysis based on health studies, monitoring of the environment, scientifically accepted environmental modeling, scientific risk analyses and fact-based mitigation
- (2) CEQA excludes “speculation” about such issues
- (3) Explain the staff’s intended scientific use of “demographic data” and the basis for determining the “two mile” study zone
- (4) Explain the staff’s intended scientific use of information concerning the “types of interactions that have occurred between petroleum facility owners/operators and the neighboring populations” and why the list of examples excludes interactions such as employment, providing a continually expanding tax base through investment, community service and environmental stewardship by petroleum companies
- (5) Include an explanation of the effects of misconceptions on environmental, public health and safety concerns related to petroleum infrastructure that are commonly held and that should be corrected to ensure well-founded regulations and policies

b. Include a robust alternatives analysis

- (1) In this case, the “no action” alternative includes the current barriers to capacity, reliability, efficiency and safety improvements and their environmental impacts
- (2) Include an analysis of simply maintaining existing petroleum infrastructure capacity
- (3) Include the life-cycle environmental performance of alternative fuels and technologies
- (4) Use methodologies that allow for comparisons between alternatives



c. Explain CEC roles and authorities

- (1) Explain how CEC currently helps local, regional, and state agencies determine the right balance between the state's energy needs and the state's environmental performance needs
- (2) Identify all sources of information that local, regional, and state agencies, the regulated community and the public need to determine the right balance between the state's energy needs and the state's environmental needs
- (3) Explain the scope and basis for CEC's expanded role and authority now

d. Comments on "Key Questions" in Attachment B

The CEC staff should provide an explanation of the choice of 1985 as the baseline. A more complete evaluation of "historical trends" should address the expansion in California's petroleum infrastructure from the outbreak of World War II up to 1985. Looking at a longer post-War period would provide perspectives on the growth of California, the growth of demand for petroleum products and the growth of supply alternatives. The longer perspective should also put the land use issues into a much more understandable post-War context.

When the CEC staff address "increased" imports, transportation, storage and capacity, the staff should specifically identify the growth scenarios it is using and the basis for each one.

e. Comments on "Description of the Petroleum Industry" in Attachment B

As in EIR's and EIS's for petroleum facilities, picking the correct "project description" is a critical first step in the PIEPR analysis. As indicated above, we suggest that CEC staff include a "pre-baseline" description of the industry in California as it developed from World War II to 1985.

For the 1985 baseline, the staff will need to reconstruct a snapshot of the industry at that time. The snapshot should include all refineries then operating, all pipelines then in service and all crude and product terminals (land and marine) then in service. The snapshot also should include the early cogeneration units being used to self-generate power at petroleum infrastructure facilities and early land/water/air disposal and treatment technologies.

"Aggregate" data should help readers understand the overall picture. However, our members should have access to the data on their own facilities that CEC staff is using. This will provide an essential check for confirming the validity of the aggregate data and any "report card" conclusions.



While a description of the industry in 2003 should be easier to prepare than a 1985 historic snapshot, the industry is now so different and complex that comparisons to 1985 may be difficult. Our only suggestion at this time is for CEC staff to utilize a variety of metrics, as we suggest for specific environmental attributes below.

As for predicting how the industry will look in the future, we suggest describing alternative scenarios, perhaps assigning a likelihood to each and disclosing the bases for each alternative scenario. Also, we would be interested in learning the metrics that you and your staff think might apply in the future.

f. Specific suggestions for PIEPR Environmental Attributes Discussions in Attachment B. We welcome inquiries on these subjects and believe we have earned an “A” grade on our current report card in each subject.

- (1) Air Quality: Add a comparison of petroleum infrastructure greenhouse gas emissions to total GHG emissions in an air basin
- (2) Biological Resources: Staff should assess future regulation/policies trends related to wetlands and other beneficial uses that may impact existing operations of petroleum infrastructure.
- (3) Environmental Justice:
  - (A) Identify environmental and public policy issues related to environmental justice that may reduce existing petroleum infrastructure capacity
  - (B) Identify information that local, regional, and state agencies need in order to assess the benefits of existing and future petroleum infrastructure to ensure appropriate balance in EJ policies (such as jobs, health care, tax base)
- (4) Safety and Hazardous Materials Management: Identify future trends in regulations/policies that may have adverse impact on maintaining existing petroleum infrastructure capacity
- (5) Land Use:
  - (A) The relationship between different combinations of industrial facilities and land use is complex. It is not clear what methodologies CEC staff will use to identify, assess and grade land use “attributes.”
  - (B) The Legislature has not addressed or resolved the increasing conflicts between industrial facilities and other land uses. These



conflicts are not within the control of WSPA members, unlike many other “attributes.”

- (C) Cities and counties have addressed conflicts differently throughout the state and guard their prerogatives regarding whether and how to resolve them. Explain how the CEC would and would not intervene in land use issues related to energy infrastructure.
  - (D) Explain the relationship between CEC intervention and the environmental performance of petroleum infrastructure facilities and other kinds of energy facilities.
- (6) Public Health and Toxic Pollutants: Reporting metrics should be based on risks, not tons, such as:
- (A) Cancer and non-cancer risks
  - (B) Comparisons of cancer and non-cancer risks relative to other nonpetroleum facilities (i.e. dry cleaners, etc)
- (7) Waste Management and Toxic Site Cleanup. Staff should:
- (A) Report on the progress made in the oil industry regarding pollution prevention and waste minimization
  - (B) Report on the prohibitions and disincentives the oil industry faces in their ability to reclaim and recycle oil products back into the stream of commerce.
- (8) Water Quality and Supply
- (A) WSPA disagrees that refinery TRI releases indicate “concerns associated with refinery wastewater discharges.” TRI estimates are based on conservative assumption calculations and do not reflect real discharges.
  - (B) Regarding wastewater discharges, staff should:
    - (i) Report on the contribution of petroleum facilities of discharges based on actual monitoring data submitted by permitted facilities for a water shed or for the state
    - (ii) Identify regulations that currently control wastewater discharges



- (iii) Identify future water discharge policy/regulatory concerns that may have adverse impact on maintaining existing petroleum infrastructure capacity.
- (C) Regarding stormwater discharges, staff should:
  - (i) Report contribution of storm water from petroleum facilities' operations to watersheds
  - (ii) Report pollutant levels of storm water from petroleum facilities relative to urban storm water runoff
  - (iii) Identify future storm water policy/regulatory concerns that may have adverse impact on maintaining existing petroleum infrastructure capacity.

### Conclusions

Of course, it is clear from the Notice of this Committee Workshop and the Attachments that there are many open questions and much work to do to complete a petroleum infrastructure "report card." We look forward to helping you at every stage.

While our industry will certainly cooperate with a review of this nature, we recommend a comparable report card, and a comparable list of key questions listed in the proposal to be studied with respect to non-petroleum fuels and technologies as well. As you know, there are a multitude of legislative and regulatory initiatives in this state that continue to select – either directly or through the use of incentives or other market mechanisms – what the "winning" transportation fuel should be. The Commission should not de-select petroleum-based fuels through this PIEPR process.

WSPA companies are leading the market forward in the production and use of some alternative fuels. However, we are opposed to government intrusion into the marketplace, and would request some attention be paid to ensuring a fuel neutral approach in all sectors of the California government and in all government activities, including applying a comparable PIEPR process to each fuel and technology.

WSPA supports streamlining of the state's permitting process without any compromises on environmental protections. We urge the Commission to endorse a streamlined state government that implements an energy policy that allows both expanding existing supplies of the cleanest in the world, while at the same time developing and increasing other supplies in the state's energy portfolio. The CEC endorses such a policy for electricity. We believe the Commission should encourage a similar policy for transportation fuels.

Irresponsible and inefficient environmental policies and regulations can have significant impact on petroleum infrastructure capacity without commensurate environmental benefits. WSPA believes that CEC must act to maintain existing petroleum capacity by providing the balance for



California's energy needs as environmental regulations, policies, and permits are being developed or adopted.

WSPA and its member companies sincerely appreciate having this opportunity to supply the Commission with our input. You have before you a considerable and complicated task, but one with enormous potential for improving the future for all Californians. Please call on us at any time for assistance as you complete the review and implementation process. Thank you for considering our comments and suggestions.